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ABSTRACT

The efforts of federal agencies (in particular, the Office of Special Education and the Office of Civil Rights) to monitor, enforce, and assist local agencies do not go far enough or look deeply enough to fully address the problems in assuring equal educational opportunities for handicapped children. Schools and state and local governments do not have the resources to carry out the mandate of Public Law 94-142 as it is now written. The major focus must be on realistic means of compliance, not just pointing out noncompliance. The Task Force Report prompts the following observations: (1) The process of the identification of issues for further study would be enhanced by input from national advocacy groups; (2) An adequate number of trained full-time staff in the agencies that carry out the recommendations is necessary; and (3) Coordination of efforts between those agencies in the areas of enforcement, data collection, policy development, and technical assistance is very important and should be encouraged. (FG)

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TESTIMONY OF
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TO

THE SUBCOMMITTEE ON SELECT EDUCATION
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

ON

THE SECRETARY'S TASK FORCE REPORT ON
EQUAL EDUCATIONAL OPPORTUNITY FOR HANDICAPPED CHILDREN

NOVEMBER 19, 1980

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I am Marilyn Rauth, director of the Educational Issues Department of the American Federation of Teachers, AFL-CIO. On behalf of the 575,000 teachers, paraprofessionals and other members of the AFT, I would like to thank you for this opportunity to express our views on the potential impact of the Secretary's Task Force Report on Equal Educational Opportunity for Handicapped Children.

We cannot claim to be experts on the intricate workings of federal/state mechanisms for enforcement of legislation such as Section 504 and P.L. 94-142. We do know, however, from reports and visits to the field that significant non-compliance with major provisions of both these laws is the norm rather than the exception in most school systems of this country, whether they be urban, rural or suburban. It is admittedly from the local perspective which we view this recent effort to improve assurances of equal educational opportunities for handicapped children.

As educators, we are aware that levels of expectation can affect outcomes, so in this sense we are most hopeful that coordination of efforts between OCR and OSE will improve monitoring, enforcement and assistance capabilities. We still feel strongly, however, that the effort does not go far enough nor look deep enough to fully address some of the very real problems in this area.

The AFT has long maintained that P.L. 94-142, for example, cannot work in its present form without a funding level of several billion dollars. Much wisdom is contained in one of the conclusions reached in the only longitudinal, broad-scale study of implementation of P.L. 94-142, conducted by SRI International for the former U.S. Bureau of Education for the Handicapped:

Some of the problems posed by these circumstances can be addressed at the local level as LEA policymakers become more cognizant of their responsibilities under the law. But most have implications for assistance from agencies and others beyond the LEA level: SEAs, state legislative and executive branch policymakers, the professional field, and BEH or Congress. LEAs need help in delimiting their legal and financial responsibility for special education and related services. They need help in clarifying the borders of their responsibilities vis a vis other agencies (e.g., health, welfare). They must also have assistance in acquiring more resources. Otherwise, the bounds of what LEAs must provide at no cost far exceed the resources available, and FAPE will continue to be defined de facto by what is currently available.

Finally, because continuing to monitor LEA compliance with procedures will distract attention from the systemic changes necessary to meet the spirit of the law, assistance designed to enhance local capacity to achieve FAPE should be emphasized and

monitoring procedural compliance correspondingly deemphasized. Achieving procedural compliance can be accomplished; realizing the intent of the Act, however, is far more challenging and requires financial resources, professional assistance and support in redefining roles and developing new skills, as well as considerable time. These are the areas in which assistance is needed if full implementation of PL 94-142 is to be achieved.

We believe compliance efforts must be held up to this standard. Schools and state and local governments simply do not have the resources to carry out the P.L. 94-142 mandate, as now written. Unless several more billion dollars are appropriated from the federal government, "assistance designed to enhance local capacity to achieve FAPE should be emphasized and monitoring procedural compliance correspondingly deemphasized," as SEI suggests. The major focus must be on assuring realistic means of compliance, not just pointing out non-compliance. Efforts should be preventive not punitive, if at all possible. OCR and OSE responsibility should be fostering compliance, not just catching non-compliance. This would require special training of OCR and OSE staff which could be incorporated in the Training Plan Activities. We do not believe the Task Force Report or Memorandum of Understanding clearly fosters this approach.

The Memorandum of Understanding calls for periodic evaluations of many of the new coordinated efforts between OCR and OSE. In this evaluation process, special attention should be given to assess whether the formal procedures established for information sharing are really effecting better compliance mechanisms, or whether staff time is simply being consumed in procedural paperwork and formalities. We are reminded of the formality of P.L. 94-142's IEP process which is meant to guarantee an individualized education program but in many instances results only in a lessening of child-teacher contact time. Care should be taken in interagency coordination efforts to guarantee the process really accomplishes its intended purpose. Insufficient staffing could cause the system to break down.

OCR has an ability, at least in our contacts with the agency, which might be beneficially shared with OSE. Although this does not seem to be addressed in the Task Force Report, there is great need to be able to get quick and reliable answers to policy clarification questions related to 504 and P.L. 94-142. Full-time staff trained to answer such questions, whether from a teacher, paraprofessional, administrator, chief state school officer or anyone else, would broaden monitoring and enforcement capabilities tremendously.

Calls to OCR for information, interpretation and policy clarification have pleasantly surprised us with staff which will 1) take time to search out who can best answer the question at hand, 2) thoroughly research a question on their own, or 3) spend as much time as needed giving necessary background. Information was always much more difficult to get from the former BEH and policy interpretations would differ depending on who you talked to. An information service should be available to anyone through an identifiable office at both OCR and OS&E, and technical assistance should be provided to states to offer comparable informational services.

Many abuses of 504 and 94-142 are maintained by claiming some other level of government is responsible for them and therefore nothing can be done to change them. An easily accessible source of information could help overcome violations made convenient by blaming a remote perpetrator.

Also, from our perspective, another major compliance issue is omitted from the Task Force Report. What protection could be afforded school and state education department employees who trigger complaints about non-compliance with Section 504 or P.L. 94-142? Now we still have instances of individuals who stand up for the rights of handicapped students being subject to harassment and even trumped up insubordination dismissal charges by their employers. Individuals often feel threatened and alone when considering revelation of illegalities related to these laws. Could technical assistance programs develop some means of protecting people who question practices related to 504 and 94-142?

On another topic, in Appendix E of the Report, there is a summary of priority compliance issues for enforcement purposes of P.L. 94-142 and Section 504. First, we believe a major omission is no mention of the need for substantial amounts of inservice training for all parties involved in education of the handicapped. Children with varying disabilities are now in least restrictive environment placements with personnel far less qualified to meet their needs than the trained personnel in the "more restrictive" placements from which they came. Provision of inservice training to assure that children's teachers and auxiliary personnel are prepared to work effectively with them is essential. This training should be given prior to placement.

Moreover, the chart provided in the priority issue compliance section totally misses hidden non-compliance issues. These, we have discovered,

are very widespread but difficult to monitor. They can, however, do the greatest damage to implementation of P.L. 94-142 and Section 504. For example, neither the issues nor the sub-issues listed get at the following problems:

- o Staff being discouraged, if not outright forbidden, to refer children for evaluations because waiting lists are too long, evaluations too costly or placements unavailable;
- o Verbal warnings or commands not to make certain placements or request certain services on the IEP;
- o Abuses of the law which seemingly look like compliance, e.g., massive least restrictive environment placements based not on children's individual needs but on the ability to save the higher cost of "more restrictive" settings (we also question whether a ranking of states on the number and percent of children served full-time in special education is a valid means of assessing the LRE requirement when such placements are to be made on an individual needs basis);
- o The use of state assessment data to predict actual personnel needs--we suspect state figures fall far below real needs because LEAs are not admitting many existing shortcomings in available staff.

We do support the Task Force recommendation that annual data compilation on the condition of education of handicapped children gathered from throughout the Department be published in a nationally accessible publication such as NCES' report, "The Condition of Education." We also endorse the Task Force's recognition that through joint planning efforts, needed data can be sought without substantially increasing data burden on educational agencies. Much more could be done to enhance compliance efforts through independent, empirically-based, research studies of actual implementation of P.L. 94-142 and Section 504, similar to the first-year study of local implementation of P.L. 94-142 done by SRI International. Both OCR and OSE could fund such studies. Only empirical-based research will end the debate over whether implementation of these two laws is going well or poorly in the schools and over whether most handicapped children are indeed receiving a free appropriate public education or not. Such research, we feel, is essential to federal policy development and clarification efforts.

With regard to the policy development section of the Memorandum of Understanding, we believe the process of identification of issues would be enhanced by allowing input of national advocacy groups either through meetings or written recommendations. As now written, OCR and OSE may limit

issues to be addressed because there is no provision for external input, and then these agencies may or may not decide to notify the public of their intent to develop policy through publication of a Notice of Intent in the Federal Register. We believe a more open process would aid issue identification.

We are somewhat concerned about the time it may take to get policy developed or clarified. In the past, the process has been a rather long one, even with single agencies. Will there be any assurances that V.B.2. Promulgation of Policy procedures in the Memorandum will not serve only to lengthen an already slow process of identifying options and arriving at policy recommendations? Both OSE and OCR should be guaranteed adequate staff and access to staff in other agencies as needed to keep the agreed upon coordinating efforts moving efficiently and quickly.

The Technical Assistance Plan seems very promising, including the four public meetings throughout the country to gain public perspective on the priority ranking of these identified needs. Again, we believe the final report to be produced by OCR and OSE recommending procedures for providing joint technical assistance relating to priority areas should include means of helping state and local education agencies obtain the resources necessary for compliance, recommendations on how to avoid common non-compliance errors, and explanations of specific criteria each agency uses to judge SEA and LEA compliance with FAPE requirements.

Finally, we believe the Training Plan is a very positive move but would like to make some additional suggestions. The need for full-time staff in each agency which could answer questions related to implementation of both 504 and P.L. 94-142 has already been mentioned. This would require special training. We were somewhat surprised that only 40 DAS staff were felt to require additional training in all of OSE. An inquiry might be made by this Committee as to why training needs within OSE are so limited.

Training sessions might be enhanced by the following additions:

- OCR and OSE staff would both benefit from sessions with practitioners, including teachers, paraprofessionals and administrators, to better understand the operational world of the school and problems arising in trying to put theory or legislated mandates into actual practice;

- Some means of ascertaining whether national, regional and state staff have a good grasp of legislative mandates they are charged to enforce might be developed and included in training sessions;
- Sessions geared to improving uniformity of responses to questions of implementation related to compliance;
- Sessions by SRI International and others who have researched implementation of these laws, if there are any others, in which common areas of non-compliance are contrasted with common areas of compliance for monitoring and enforcement staff.

In conclusion, we support the efforts of OCR and OSE to coordinate their activities in enforcement, data collection, policy development and technical assistance. We hope both agencies can really function in team relationships, each offering support to the other in a non-competitive atmosphere. The Task Force Report and Memorandum of Understanding are a step in the right direction. Yet, effectiveness in the four focus areas mentioned above will, in our opinion, require much more extensive efforts than those cited in these documents. The more efficient data collection developed, the more obvious non-compliance will become. This should be done. But the really tough questions, as we've tried to briefly illuminate in this testimony, lie in the realm of technical assistance and policy development. What is a free appropriate public education and how can we make sure schools are able to provide it should attract our greatest energies. The alternative is to show that schools, lacking adequate resources, have failed to fully meet the mandates of P.L. 94-142 and Section 504. This focus will not give handicapped children the rights they're being denied, it will only shorten the life of public education and draw people toward alternatives outside public schools promising the pot of gold at the end of the rainbow. It remains our firm belief that directed attention to real compliance problems of Section 504 and P.L. 94-142 and practical assistance to the schools, already making extensive efforts to comply, can assure the rights of all disabled children within the public education system. We therefore look forward to positive leadership efforts emanating from cooperative activities between OCR and OSE whereby the primary focus is on fostering compliance rather than exclusively on pointing out non-compliance.